

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 381 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No :

HEIRS OF BAI SAMJU M K - MANEKLAL LAKHABHAI CHUNARA

Versus

CHANDULAL PAHACHAND MODY

Appearance:

MR PV NANAVATI for Petitioner
MR GS HARIBHAKTI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 30/06/2000

ORAL JUDGEMENT

1. This is tenant's revision under Section 29(2) of
the Bombay Rent Act.

2. Brief facts giving rise to this revision are

shortly as under :

In a civil litigation arising out of Regular Civil Suit No. 300 of 1961 ultimately there was compromise in First Appeal No.663 of 1977 before this Court and in terms of the compromise Decree this Court appointed Two Receivers and directed them to hand over possession to the Receivers. The Receivers were further directed to hand over possession of respective shares to the respective owners. The Receivers handed over possession of Survey No.2/5 of Saijpur Bogha. The plaintiff thus became owner of the property since 25.12.1978. Out of that property bearing Gram Panchayat No.5519, City Survey No.760 the defendant was tenant of the land and the super-structure was constructed by the defendant and the rent of the land was fixed at Rs.10/- p.m. The defendant was in arrears of rent since 1.1.1958 amounting to Rs.3000/-. Thus, more than six months rent fell due from the defendant. Notice was accordingly served upon the defendant, but he did not vacate the land. It was also alleged that the defendant had encroached upon more land of the plaintiff and thus committed breach of the conditions of tenancy. On this ground the Suit for eviction of the defendant and for recovery of arrears of rent which was not time barred was filed.

3. The defendant resisted the Suit on the ground that the open land was taken on monthly rent of Rs.1/- from the landlord and he raised super-structure thereon with the consent of the then landlord. It was denied that the rate of rent was Rs.10/- p.m. He has shown his readiness and willingness to pay the rent. Failure of rent occurred because the defendant was not sure and aware as to who was the real landlord of the suit land. It was pleaded that the plaintiff never gave notice that he became owner and asked the defendant to pay the rent to him. It is in these circumstances that the defendant was not in arrears of rent and was not unwilling to pay the arrears of rent. The quantum of arrears of rent was also disputed. According to the defendant he was in arrears of rent since 1.5.1965.

4. The Trial Court dismissed the suit for eviction, but passed Decree for arrears of rent which was within limitation.

5. The landlord preferred Appeal which was partly allowed by the Court below. The Suit for eviction was decreed. It is therefore this revision.

6. Learned Counsel for the revisionist Shri P.V.Nanavati has been heard and the Judgment of the lower Appellate Court has been examined.

7. It is not in dispute that only the land was let out and not the super-structure. It is common case of the parties that the super-structure was raised by the defendant tenant who is revisionist before me. The rate of rent is in dispute, but it was held that the agreed rent was Rs.10/- p.m. This is concurrent finding of fact which cannot be interfered in this Revision.

8. The Lower Appellate Court found that the case is covered by Section 12(3)(a) of the Bombay Rent Act inasmuch as the notice served by the landlord was not replied by the defendant and no stand was taken within a period of one month from the date of service of notice that the standard rent was Rs.1/- p.m. For the first time the dispute of a standard rent was raised in the written statement. The Appellate Court found that the time barred rent should have been paid within a month of receipt of notice of demand. In the opinion of the Appellate Court the time barred rent may not be recovered through the process of Court, but upon receipt of notice of demand it was the duty of the tenant to pay the time barred rent to the landlord and since this was not done the case is covered by Section 12(3)(a) of the Rent Act. It is also finding of the lower Appellate Court that compliance of Section 12(3)(b) was not made by the tenant and he did not deposit the entire arrears of rent before trial Court before final decision of the Suit. Thus the decision of the Lower Appellate Court cannot be said to be contrary to law. The Lower Appellate Court therefore committed no illegality in passing the Decree for eviction. So far as decree for arrears of rent is concerned the lower Appellate Court has confirmed the Decree passed by the trial Court. As such I do not find any merit in this revision which is liable to be dismissed. Accordingly the Revision is dismissed with no order as to costs.

9. Shri P.V.Nanavati, learned Counsel for the revisionist has pointed out that the lower Appellate Court has not recorded any finding as to who is owner of the super-structure over the land in Suit. However, from perusal of the pleadings of the parties it is clear that it is common case of the parties that only open land was let out and the super structure was made thereon by the tenant revisionist. As such, while handing over possession of the land in question to the landlord respondent, the defendant - revisionist shall be at

liberty to remove super-structure from the land in question at his own cost and expenses.

sd/-

Date : June 30, 2000 (D. C. Srivastava, J.)

sas